IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10411 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAKUNTALABEN SHAMBHUPRASAD BHATT

Versus

DISTRICT PANCHAYAT

Appearance:

MR FB BRAHMBHATT for Petitioner

MR RC KODEKAR, AGP for Respondent No.3

MR AD OZA, GOVT.PLEADER for Respondent Nos.1 & 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/02/2001

ORAL JUDGEMENT

#. Respondent no.3 is served. It is represented by Shri RC Kodekar, learned AGP. Shri AD Oza, Government Pleader

represents respondent nos.1 & 2 and Shri FB Brahmbhatt appears for the petitioner.

#. Affidavits having been exchanged, with the consent of the learned counsel for the parties, this petition is being finally disposed of at the admission stage.

#. The short grievance of the petitioner is that, the respondent authorities are not fixing the pension, gratuity and other retirement benefits payable to the petitioner. Reference has been made to the order dated 19-8-1997 Annexure-'B', through which, the request of the petitioner for pensionary benefits was turned down on the ground that, she has not completed 10 years of service. The pensionary benefits are to be prepared, processed and forwarded by the respondent nos.1 and 2 to the State Government, respondent no.3. The stand of the respondent nos.1 and 2 seems to be that, because minimum period of 10 years of service was not completed, pensionary benefits could not be given to the petitioner.

#. Learned counsel for the petitioner has rightly drawn my attention to Rule-192 of the Bombay Civil Services Rules, 1959, and has also pointed out factual back drop stating that the petitioner's husband was appointed on 2-5-1981 and he served till 31-5-1991. Computed between these two periods, the total service rendered by the deceased petitioner's husband comes to 9 years, 11 months and 29 days, which is short of only one day in completing 10 years minimum service.

#. Rule-192 of B.C.S.R. provides that, 'Government may, for special reasons to be recorded in writing -
(1) condone a deficiency, which may not ordinarily exceed one year, in the amount of duty or of total service or both performed by a Government servant in order to qualify him to receive a retiring pension or to receive a pension as distinct from a gratuity.'

It is thus clear from this Rule that the Government is empowered to condone deficiency in total service, which may not exceed one year. In the instant case, total deficiency is by one day, hence it is a most reasonable case in which respondent nos.1 and 2 should have processed and finalized pension papers and other retirement benefits and should have forwarded the same to the State Government, respondent no.3. Since, it has not been done, and the request of the petitioner was rejected on hypertechnical ground, the petition is bound to succeed.

#. In view of the above discussions, the petition is hereby allowed. The order dated 19-8-1997 Annexure-'B' is hereby set-aside. The respondent nos.1 and 2 are directed to process and prepare pensionary and other retirement benefits permissible to the petitioner, within a period of three months from today and shall forward the same to the Government. Thereafter, the Government, respondent no.3 shall consider the papers so forwarded by the respondent nos.1 and 2 in accordance with Rule-192 of the Bombay Civil Services Rules and observations made in the body of the judgment, within a period of one month from the date of receipt of the papers. In case, respondents no.1 and 2 require any further information from the petitioner, the same shall be furnished by the petitioner within a week of receipt of communication for additional information from the respondent nos.1 and 2. No order as to cost.

February 17, 2001. [D.C. Srivastava, J.]

/sakkaf